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of Labor and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

|                               |                                  |
|-------------------------------|----------------------------------|
| In the Matter of              | ) CASE NO. OSH 2011-12           |
|                               | ) (Inspection No. 313081705)     |
| DIRECTOR, DEPARTMENT OF LABOR | )                                |
| AND INDUSTRIAL RELATIONS,     | ) STIPULATION AND SETTLEMENT     |
|                               | ) AGREEMENT; EXHIBIT A; APPROVAL |
| Complainant,                  | ) AND ORDER                      |
|                               | )                                |
| vs.                           | )                                |
|                               | )                                |
| WAFFLES OF HAWAII,            | )                                |
|                               | )                                |
| Respondent.                   | )                                |

**STIPULATION AND SETTLEMENT AGREEMENT**

Complainant Director of Labor and Industrial Relations ("Director") and  
Respondent WAFFLES OF HAWAII ("Respondent") having reached a full and complete  
settlement of the above-captioned contested case presently pending before the Hawaii Labor  
Relations Board ("Board") stipulate and agree as follows:

On or about February 28, 2011, the Director, by and through the State of Hawaii's  
Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located

at 2829 Awaawaloa Street, Suite C, Honolulu, Hawaii 96819.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on May 24, 2011 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$375.00. See Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 2829 Awaawaloa Street, Suite C, Honolulu, Hawaii 96819.

3 At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. Respondent has abated each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22.

5. The Citation is amended as follows:

a. Citation 1, Items 1a & 1c are affirmed in all respects.

b. Citation 1, Item 1b is deleted.

6. The Director reduces the aggregate penalty from \$375.00 to \$262.50 which shall be paid in full to the Director of Budget and Finance upon the execution of this

Agreement.

7. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

8. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

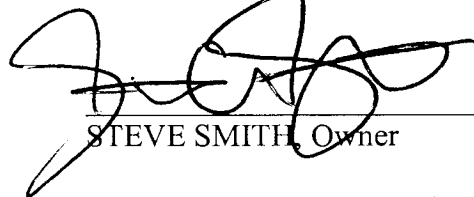
9. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

10. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

11. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.

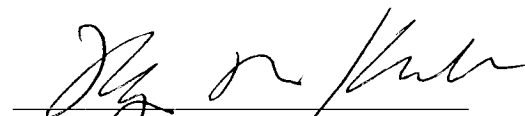
DATED: Honolulu, Hawaii, 10-6-11.

WAFFLES OF HAWAII

  
\_\_\_\_\_  
STEVE SMITH, Owner

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND  
INDUSTRIAL RELATIONS

  
\_\_\_\_\_  
ROBYN M. KUWABE  
Deputy Attorney General  
Attorney for Director of Labor and  
Industrial Relations, State of Hawaii  
\_\_\_\_\_  
DWIGHT TAKAMINE

APPROVED AND SO ORDERED BY  
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 450

DATED: October 20, 2011



JAMES B. NICHOLSON, Chair



SESNITA A.D. MEOPONO, Member



ROCK LEY, Member

## State of Hawaii

Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813  
Phone: (808)586-9110 FAX: (808)586-9104



Certified Number: 7006 2760 0000 7214 9234

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## Citation and Notification of Penalty

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**To:**

Waffles of Hawaii  
and its successors  
P O Box 30006  
Honolulu, HI 96820

**Inspection Number:** 313081705  
**Inspection Date(s):** 02/28/2011- 02/28/2011  
**Issuance Date:** 05/24/2011  
**OSHC ID:** R1844  
**Optional Report No.:** 01211  
**Inspection Type:** Complaint  
**Scope of Inspection:** Comprehensive Inspection

**Inspection Site:**

2829 Awaawaloa St, Suite C  
Honolulu, HI 96819

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

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This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. **The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.**

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Employers' Right to Contest** - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

**Penalty Payment** - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful and Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

**All abatement verification documents must contain the following information:** 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

**Employer Rights and Responsibilities** - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Employees' Right to Contest** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

**Inspection Activity Data** - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at [WWW.OSHA.GOV](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.

## ABATEMENT CERTIFICATION

JENNIFER SHISHIDO, ADMINISTRATOR  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813

Waffles of Hawaii  
P O Box 30006  
Honolulu, HI 96820

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_

I attest that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name



**State of Hawaii**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division



**NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE**

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 05/24/2011. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on \_\_\_\_\_ at \_\_\_\_\_.

Employees and/or representatives of employees have a right to attend an informal conference.



### Citation and Notification of Penalty

Company Name: Waffles of Hawaii  
Inspection Site: 2829 Awaawaloa St, Suite C, Honolulu, HI 96819

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The alleged violations below (1a-1c) have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

#### Citation 1 Item 1a Type of Violation: **Serious**

29 CFR 1910.178(l)(1)(ii) [Refer to chapter 12-73.1, HAR] was violated because:

Two employees were allowed to operate a forklift even though they did not receive forklift operator training nor evaluation. Operation of forklifts by untrained workers exposes the employees to struck-by hazards.

29 CFR 1910.178(l)(1)(ii) states "Prior to permitting an employee to operate a powered industrial truck (except for training purposes), the employer shall ensure that each operator has successfully completed the training required by this paragraphs (l), except as permitted by paragraph (l)(5)."

Location: Establishment

|   |            |
|---|------------|
| Date By Which Violation Must be Abated: | 06/27/2011 |
| Penalty:                                | \$ 375.00  |

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See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



### Citation and Notification of Penalty

Company Name: Waffles of Hawaii  
Inspection Site: 2829 Awaawaloa St, Suite C, Honolulu, HI 96819

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#### Citation 1 Item 1b Type of Violation: **Serious**

29 CFR 1910.178(l)(4)(iii) [Refer to chapter 12-73.1, HAR] was violated because:

The employer failed to conduct evaluations at least once every three years on two employees who last received forklift operator training in 2007 and 2008 respectively. Operation of a forklift by an unevaluated forklift operator exposes the employees to struck-by hazards.

29 CFR 1910.178(l)(4)(iii) states "An evaluation of each powered industrial truck operator's performance shall be conducted at least once every three years."

Location: Establishment

Date By Which Violation Must be Abated:

06/27/2011

**State of Hawaii**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety And Health Division

**Inspection Number:** 313081705

**Inspection Dates:** 02/28/2011 - 02/28/2011

**Issuance Date:** 05/24/2011



**Citation and Notification of Penalty**

**Company Name:** Waffles of Hawaii  
**Inspection Site:** 2829 Awaawaloa St, Suite C, Honolulu, HI 96819

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**Citation 1 Item 1c Type of Violation: **Serious****

29 CFR 1910.178(l)(6) [Refer to chapter 12-73.1, HAR] was violated because:


At the time of inspection, there were no written certification records available to verify compliance with the powered industrial truck operator training and evaluation requirements for four employees who were allowed to operate a forklift.

29 CFR 1910.178(l)(6) states "Certification. The employer shall certify that each operator has been trained and evaluated as required by this paragraph (l). The certification shall include the name of the operator, the date of the training, the date of the evaluation, and the identity of the person(s) performing the training or evaluation."

Location: Establishment

Date By Which Violation Must be Abated:

06/27/2011

  
\_\_\_\_\_  
JENNIFER SHISHIDO  
Administrator

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See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

## State of Hawaii

Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813

### SUMMARY OF PENALTIES

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**Company Name:** Waffles of Hawaii  
**Inspection Site:** 2829 Awaawaloa St, Suite C, Honolulu, HI 96819  
**Issuance Date:** 05/24/2011

**Summary of Penalties for Inspection Number 313081705**

|                        |      |               |
|------------------------|------|---------------|
| Citation 1, Serious    | = \$ | 375.00        |
| <b>TOTAL PENALTIES</b> | = \$ | <b>375.00</b> |

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Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.